IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3681 OF 2004

Mr.Leelachand Dhundaji Oswal. ...Petitioner

vs.

1. Purshottam Kashinath Dabhade
and another. ...Respondents

Mr.S.G.Surana, for Petitioner

Mr.A.C.Mehta for Respondent no.1.

CORAM: R.M.S.KHANDEPARKAR,J.

DATE : 1ST NOVEMBER,2004.

P.C.:-

1. Heard learned Advocates for the parties. The petitioner challenges the order passed by the lower Appellate Court setting aside the dismissal of the suit and further decreeing the suit for eviction on the ground of sub-letting and requirement of the premises reasonably and bonafide for personal use and occupation of the Respondent no.1.

2. The respondents had initiated eviction proceedings against the petitioner on the ground of default in payment of rent, sub-letting of premises and bonafide and reasonable need of the suit premises for the occupation of the respondent. The trial Court had

dismissed the suit on all three grounds. The

Respondents preferred the appeal against the order of the trial Court, however, restricted the challenge in relation to only two grounds namely sub-letting and bonafide need of premises, by specifically giving up the claim in relation to default in payment of rent.

3. It is the contention of the learned Advocate for the Petitioner that the trial Court having analysed the evidence on record in detail and in proper perspective, the lower Appellate court could not have set aside the impugned judgement and decree of the trial Court on the ground of reasonable and bonafide requirement of the premises. It is the contention of the petitioner that the Respondent initially failed to discharge his burden regarding sub-letting and the same having been properly considered by the Trial Court, the Lower Appellate Court could not have set aside the said finding and could not have decreed the suit in relation to the claim of sub-letting the premises. These contentions are seriously disputed on behalf of the Respondents.

4. Undoubtedly, the Lower Appellate Court on detail analysis of the evidence on record has held that

the petitioner has failed to establish that he is in fact doing business of partnership in the suit premises

and the evidence on record clearly revealed that the entire business in the suit premises has been carried out by the Respondent no.2 to the exclusion of the petitioner. The analysis of the evidence on record of the Lower Appellate Court and the finding arrived at on the basis of said analysis, discloses that there is no documentary evidence produced by the Petitioner or Respondent no.2 in support of his claim that they are carrying on business in the suit premises on partnership basis. Further the finding discloses that the petitioner is neither maintaining any account in relation to the business in the suit premises nor even had knowledge of annual turn over in the suit premises. Added to this, the finding also discloses that initially there was no sign-board on the suit premises, but after some years of letting out the premises, the sign-board was displayed as "Ramesh Steel Centre". It was sought to be contended on behalf of the Petitioner before the Court below that the name of "Ramesh Steel Centre" was found to be lucky and therefore, same was given to the said business. However, it is to be noted that in the course of evidence, the petitioner had claimed the Respondent no.2 Ramesh to be his employee, without being able to substantiate same by producing any evidence in

that regard. Even Respondent no.2 could not produce any evidence in that regard. The finding of the Lower Appellate Court also discloses that Respondent no.2 had

attempted to obtain electric supply connection, which was objected to by the Respondent no.1 Landlord. However, the Petitioner had no knowledge about the same. The petitioner even could not disclose the number of the telephone which is provided to the suit premises. Though it was sought to be claimed that income from the suit premises was disclosed to the Income Tax Department by the Petitioner, the Petitioner could not produce any documentary evidence in that regard. Undoubtedly, as rightly observed by the Lower Appellate Court, the initial burden of proving the act of unlawful sub-letting of premises lies upon the landlord. However, once the occupation or the presence of the third person in the suit premises is admitted, it is for the tenant to justify the presence or occupation of such third person in the suit premises. In the instant case not only the presence of Respondent no.2 in the suit premises was admitted by the Petitioner but the fact that the business was run by the Respondent no.2 was admitted in as much as that the Petitioner had admitted that he had shifted his business to Satara and only twice or thrice a week he used to come to the suit premises. In other words, actually the business in the

suit premises is being carried out by Respondent no.2 and once this fact has been admitted by the Petitioner, it was necessary for the Petitioner himself to establish that such a business carried out by the Respondent no.2

was entirely in his capacity as the Employee of the Petitioner or partner of the Petitioner and since the Petitioner has failed to establish either of the things, no fault can be found with the finding arrived at by the Lower Appellate Court of illegal sub-letting of the premises by the Petitioner to the Respondent no.2. In fact the claim that Respondent no.2 being an employee was not raised in the pleading which is apparent from the finding arrived at and such claim was raised only in the course of evidence and the initial pleading was that of partnership.

5. Even the finding of the Trial Court clearly discloses that "There is no dispute that defendant no.2 (Respondent no.2 herein) is present in the suit premises and is conducting business or taking part in the business." The further finding by the Trial Court is that "Initially there was no sign-board but subsequently a sign-board of Ramesh Steel Centre was found in the suit premises." The further finding of the Trial Court is that "The summons of the suit was received by

defendant no.2 at the address of the suit premises and the defendant no.1 has received it at Satara." Thus, the findings of the Trial Court read with the findings arrived at by Lower Appellate Court clearly establish

the case of sub-letting by the Petitioner in favour of the Respondent no.2.

6. Before parting with the matter, it is necessary to refer to the curious finding arrived at by the Trial Court. It has been observed by the Trial Court that "He claims, on enquiry defendant no.1 told him that Ramesh is his business partner. If it was so, he must have mentioned this fact in the plaint, but there is no pleading to that effect." It is to be noted that the facts which are revealed to the Respondent no.1-Landlord in relation to the business activities in the suit premises were not required to be pleaded in the plaint, once it was disclosed by the landlord that the premises were sub-let by the Petitioner in favour of Respondent no.2. The facts regarding the activities of the business in the suit premises are in the realm of evidence in support of the claim of the Respondent no.1-Landlord about sub-letting of the premises and it is not necessary for the parties to disclose the

evidence in the pleadings. Once the landlord has established the fact of sub-letting of the premises, the landlord is entitled to proceed for eviction on that ground, irrespective of the fact that whether the eviction of the petitioner is available on the other ground of need of premises for bonafide and reasonable

requirement of the landlord. Being so, when the finding on the ground of sub-letting the premises is established, it is not necessary to ascertain whether the finding that the suit premises is required for bonafide and reasonable need, is to be proved, and the same is borne out from the materials on record.

7. For the reasons stated above, there is no case for interference in the impugned judgement, and therefore, the Petition fails and is hereby dismissed with no order as to costs.

1.11.2004 (R.M.S.Khandeparkar, J)